BRB MALAYSIA SDN BHD v. BIMAL PILLAI

HIGH COURT MALAYA, KUALA LUMPUR
ARZIAH MOHAMED APANDI JC
[ORIGINATING SUMMONS NO: WA-24NCVC-2094-05-2025]
4 NOVEMBER 2025

Abstract – *A settlement agreement and its accompanying documents, in this case a memorandum of agreement, executed contemporaneously to resolve an employment dispute constitute a single transaction. Consequently, a broad waiver of 'all claims' contained therein is valid and enforceable provided there is consideration for the transaction as a whole; such an agreement does not violate public policy unless it expressly stifles public prosecution, and it effectively bars the signatory from subsequently initiating any civil or criminal proceedings arising from the same factual matrix.*

CONTRACT: *Agreement – Settlement agreement – Dispute between employer and employee – Validity – Contemporaneous execution of settlement agreement and memorandum of agreement – Terms of settlement agreement provided for employee's waiver of 'all claims' against employer in exchange for payment of substantial sums to employee – Whether documents formed single transaction – Whether separate consideration required for each document – Whether settlement agreements void for want of consideration – Whether settlement sum supported entire transaction*

CONTRACT: *Agreement – Settlement agreement – Dispute between employer and employee – Validity – Contemporaneous execution of settlement agreement and memorandum of agreement – Terms of settlement agreements provided for employee's waiver of 'all claims' against employer in exchange for payment of substantial sums to employee – Employee commenced civil and criminal proceedings against employer after receiving sums promised under settlement agreement – Whether there was breach of agreements – Whether agreements void – Whether there was consideration – Whether there was undue influence and economic duress – Whether agreements tainted with fraud and illegality and against public policy – Contracts Act 1950, ss. 16(2) & 24*

The defendant was employed by the plaintiff, a major corporation in the oil and gas industry, and he held a senior technical position and was responsible for significant operational matters. During his employment, the defendant became concerned about workplace safety issues, especially regarding a 'near-miss incident' that occurred. The defendant then reported this matter to the Department of Occupational Safety and Health ('DOSH'). The DOSH conducted an investigation and notified the plaintiff that the investigation was complete and no further action was needed. The defendant disputed the existence or authenticity of this notification as he believed that the DOSH's

investigation was incomplete or inadequate and that the plaintiff falsely represented its status. Following the defendant's reports to the DOSH and his persistent complaints about safety matters, the relationship between the defendant and the plaintiff's management deteriorated substantially. It was alleged by the plaintiff that the defendant's conduct became increasingly problematic and disruptive. Specifically, the defendant was said to have breached company policies, engaged in insubordination by refusing to follow his supervisors' instructions, caused disruption among his colleagues through confrontational behaviour and failed to perform assigned tasks competently and on time. The plaintiff's allegations were documented in its show cause letter issued to the defendant. The defendant disputed these allegations. Dissatisfied with the defendant's reply, the plaintiff carried out an internal inquiry, which resulted in the plaintiff terminating the defendant's employment and paying him three months' salary *in lieu* of notice in the amount of RM95,584. The defendant then filed a representation for unjust dismissal with the Industrial Relations Department ('IRD') and the IRD fixed a date for conciliation. There were communications between the parties and the IRD officer during the period leading to the scheduled conciliation date. The plaintiff informed the IRD officer that it was willing to settle the matter if the defendant agreed to execute a settlement agreement ('SA') and a memorandum of agreement ('MOA'). The SA provided that the plaintiff would pay the defendant a settlement sum of RM1,226,988 and that the defendant would waive 'all claims' against the plaintiff. Both parties attended the scheduled conciliation at the IRD office and executed the SA and the MOA. Subsequent to the execution of the agreements, the plaintiff proceeded to fulfil its obligations by making the settlement payment of RM1,226,988 to the defendant.

Initially, there was no dispute between the parties. However, more than a year after the settlement, the defendant pursued civil proceedings and criminal prosecution against the plaintiff and its affiliates, under the Whistleblower Protection Act 2010 ('WPA'), the Occupational Safety and Health Act 1994 ('OSHA') and the Penal Code ('PC'). The defendant also issued a letter of demand to the plaintiff, asserting that the SA was void on various grounds, including coercion and demanded that the plaintiff take remedial action, failing which legal proceedings would be commenced. The plaintiff responded but as the parties were unable to resolve their differences, the plaintiff filed the present originating summons ('OS'). The plaintiff sought, *inter alia*, (i) a declaration that the defendant had breached the terms of the SA and the MOA; (ii) an injunction restraining the defendant from commencing or continuing civil or criminal proceedings against the plaintiff and its affiliates; and (iii) general damages. The defendant opposed the plaintiff's application, contending that: (i) the SA and the MOA were separate and independent agreements rather than complementary documents forming a single transaction; (ii) no valid consideration was provided for the

SA specifically; (iii) both agreements were procured under economic duress and undue influence; (iv) the agreements were void *ab initio* on grounds of fraud relating to misrepresentations in the notice of termination ('NOT'); (v) the agreements were illegal and contrary to public policy as they purportedly stifled criminal prosecution and violated his statutory rights as a whistleblower; (vi) even if the agreements were valid, the defendant had not breached their terms as his subsequent legal actions fell outside the scope of what was prohibited; and (vii) the defendant was entitled to pursue claims under the WPA, the OSHA and the PC notwithstanding any settlement reached concerning his unjust dismissal claim before the IRD. The issues that arose were: (i) whether the SA and the MOA formed a single transaction; (ii) whether valid and sufficient consideration was provided by the plaintiff for the SA or whether the settlement sum was paid exclusively for the MOA such that the SA was void for want of consideration; (iii) whether the SA and/or MOA were voidable on the grounds that the defendant's consent was vitiated by economic duress and/or undue influence exerted by the plaintiff; (iv) whether there was fraud perpetrated by the plaintiff in the NOT concerning the status of the DOSH; (v) whether the SA and/or the MOA were void on the grounds of illegality or as being public policy; and (vi) whether the defendant had breached the terms of the SA and the MOA.

Held (allowing application):

(1) The SA and the MOA were executed contemporaneously as part of a single settlement transaction and must therefore be construed together, for the following reasons: (i) the documents were unquestionably executed contemporaneously. Both bore the date 6 April 2023. They were signed on the same occasion, in the same place, as part of the same event; (ii) the documents related to the same transaction – the settlement of the defendant's representation for unjust dismissal at the IRD. Both documents were directed at resolving the same underlying controversy – the dispute arising from the defendant's termination and his claim for unjust dismissal; (iii) the pre-contractual communications established, beyond any doubt, that the parties understood and intended that both documents would be executed together as a package; (iv) there was a single overall consideration for the settlement, *ie*, RM1,226,988 by the plaintiff to the defendant; (v) the commercial purpose and effect of the two documents, viewed objectively, was to achieve a comprehensive settlement; and (vi) construing the two documents together aligned with common sense and commercial practice. (paras 41-47)

(2) As the SA and the MOA constituted a single transaction, the defendant's argument, that the SA lacked consideration and was therefore void and unenforceable, failed at the outset. When multiple

documents form part of one transaction, the consideration need only support the entire transaction. There was no requirement for separate consideration for each document. (paras 53 & 54)

(3a) To establish undue influence under s. 16(2) of the Contracts Act 1950 ('CA'), the defendant must show either that the plaintiff held real or apparent authority over him or was in a fiduciary relationship with him (under s. 16(2)(a) of the CA) or his mental capacity was compromised through age, illness or mental or physical distress (under s. 16(2)(b) of the CA) and that the plaintiff used its position to dominate his will and that the resulting transaction was unfairly advantageous to the plaintiff. The defendant had not established any of these elements and therefore had not established undue influence. (paras 79 & 85)

(3b) The plaintiff was the defendant's former employer but the employment had ended months earlier, on 24 November 2022. By the time the settlement was reached on 6 April 2023, more than four months had passed since the termination. The defendant was no longer the plaintiff's employee. He was no longer subject to the plaintiff's instruction or control and no longer reliant on the plaintiff for his livelihood. Legally, he was a stranger to the plaintiff, with the only link being the unresolved dispute. Under the circumstances, no relationship of authority, trust or confidence could create undue influence. (para 80)

(3c) There was no evidence that the plaintiff dominated the defendant's will. The settlement negotiations were conducted through the IRD conciliation process, with an independent IRD officer present. The plaintiff simply stated its settlement terms, which the defendant was free to accept or reject. This was not domination; it was standard settlement negotiation. Further, the transaction was not unfairly advantageous to the plaintiff. The defendant received RM1,226,988 in exchange for giving up his unjust dismissal claim and waiving other potential claims. This substantial sum was likely more favourable than the outcome the defendant would have achieved through litigation. Both parties gave up something – the defendant gave up his claims while the plaintiff paid a substantial sum. This was a fair exchange. (paras 83 & 84)

(4) The defendant failed to establish fraud. The allegations were unsupported by clear and convincing evidence, were not based on *viva voce* testimony as required for fraud allegations, concerned statements made in the NOT rather than in the settlement negotiations and, in any event, were settled and released by the settlement agreements. The agreements were not void on the grounds of fraud. (para 105)

(5) The SA did not contain any express clause requiring the defendant to withdraw criminal complaints or refrain from reporting crimes to authorities. Clause 1.3 of the SA provided for a general waiver of civil claims. It did not purport to prevent the defendant from reporting criminal conduct to law enforcement officers. Even if the defendant agreed not to pursue private prosecution, this did not affect the right of public authorities to investigate and prosecute criminal offences if they became aware of them. The defendant remained free to lodge police reports. The authorities remained free to investigate and prosecute. No public prosecution was being stifled. The SA was not void for illegality or against public policy. (paras 109, 110 & 117)

(6) After executing the agreements, the defendant filed civil proceedings and criminal prosecution against the plaintiff. Both the civil proceedings and criminal prosecution were 'related to the representation' within the meaning of cl. (ii) of the MOA. They arose from the same factual matrix – the defendant's employment, his complaints to the DOSH and his termination. The defendant had contractually agreed to waive all claims. He received substantial consideration, *ie*, RM1,226,988 for agreeing to this broad waiver. He could not now repudiate his contractual undertaking. The defendant had breached both the SA and the MOA by filing the civil proceedings, initiating the private prosecution application and seeking to challenge the termination through these proceedings. These actions clearly contravened his contractual commitments, which he entered into for substantial consideration. (paras 120, 121, 123, 129, 131 & 134)

Case(s) referred to:

Abdul Rashid Maidin & Ors v. Lian Mong Yee [2008] 1 CLJ 1 CA ***(refd)***

Charles Ooi Kiah Inn & Anor v. Kukuh Maju Industries Sdn Bhd [1993] 3 CLJ 199 SC ***(dist)***

CIMB Bank Bhd v. Veeran Ayasamy (Wakil Diri Kepada Letchimi Muthusamy, Si Mati) [2015] 7 CLJ 289 CA ***(refd)***

Idris Hj Mohamed Amin v. Ng Ah Siew [1935] CLJU 15; [1935] 1 LNS 15 HC ***(refd)***

JR Joint Resources Holdings Sdn Bhd v. Norhana Sharkhan & Other Cases [2021] CLJU 1413; [2021] 1 LNS 1413 HC ***(refd)***

Kuala Dimensi Sdn Bhd v. Port Kelang Authority [2025] 3 CLJ 497 FC ***(dist)***

Miles v. New Zealand Alford Estate Co [1886] 32 Ch D 266 ***(refd)***

Mohamed Isa & Ors v. Abdul Karim & Ors [1970] CLJU 82; [1970] 1 LNS 82 HC ***(refd)***

Newlake Development Sdn Bhd v. Zenith Delight Sdn Bhd & Ors [2021] CLJU 92; [2021] 1 LNS 92 HC ***(refd)***

Oriental Bank Bhd v. Alphabumi (Malaysia) Sdn Bhd & Ors [1997] CLJU 531; [1997] 1 LNS 531 HC ***(refd)***

Pao On v. Lau Yiu Long [1980] AC 614 ***(refd)***

RHB Bank Bhd v. Singlefine (M) Sdn Bhd & Ors [2020] 1 CLJ 721 HC ***(refd)***

Serac Asia Sdn Bhd v. Sepakat Insurance Brokers Sdn Bhd [2013] 6 CLJ 673 FC ***(refd)***

A *TTDI Jaya Sdn Bhd v. Yew Hong Teng & Anor [2016] MLJU 1772 HC **(refd)***
*Yushri Zainudin v. Silterra Malaysia Sdn Bhd [2017] CLJU 2187; [2017] 1 LNS 2187 HC **(dist)***

Legislation referred to:
Contracts Act 1950, ss. 2, 16(2)(a), (b), 20, 24, 26, 65, 66
B Criminal Procedure Code, s. 401A
Industrial Relations Act 1967, s. 20(4)
Occupational Safety and Health Act 1994, s. 27
Whistleblower Protection Act 2010, ss. 14, 16(2)

For the plaintiff - Joshua Teoh Beni Chris & Anna Tan Ling Er; M/s Skrine
C *For the defendant - Nurul Athirah Hairol Nizal; M/s Qing Chambers*

Reported by Lina E

JUDGMENT

Arziah Mohamed Apandi JC:

D **Introduction**

[1] This matter comes before me by way of originating summons filed by the plaintiff on 17 April 2025 (OS). The plaintiff seeks, *inter alia*, a declaration that the defendant has breached the terms of a settlement
E agreement dated 6 April 2023 (SA) and/or a memorandum of agreement dated 6 April 2023 (memorandum), together with consequential reliefs including a perpetual injunction restraining the defendant from commencing or continuing civil or criminal proceedings against the plaintiff and its affiliates, general damages to be assessed, and costs. The application raises important questions concerning the enforceability of settlement agreements,
F the scope of contractual waivers, and the interplay between contractual obligations and statutory rights under various protective legislation including the Whistleblower Protection Act 2010 (WPA 2010).

[2] The defendant vigorously opposes the application and has filed
G comprehensive written submissions spanning multiple grounds of defence. The defendant's primary contentions are that the SA and memorandum are separate and independent agreements rather than complementary documents forming a single transaction; that no valid consideration was provided for the settlement agreement specifically; that both agreements were procured under economic duress and undue influence; that the agreements are void *ab initio*
H on grounds of fraud relating to misrepresentations in the notice of termination (NOT); that the agreements are illegal and contrary to public policy as they purportedly stifle criminal prosecution and violate his statutory rights as a whistleblower; and finally, that even if the agreements are valid, the defendant has not breached their terms as his subsequent legal
I actions fall outside the scope of what was prohibited. The defendant further argues that he is entitled to pursue claims under the WPA 2010, the

Occupational Safety and Health Act 1994 (OSHA 1994) and the Penal Code (PC) notwithstanding any settlement reached concerning his unjust dismissal claim before the Industrial Relations Department (IRD).

[3] Having carefully examined all the evidence presented and the submissions made by the parties, I award the plaintiff's claim in full. My reasons are explained in detail below. I should emphasise at the outset that this case involves issues of significant practical importance beyond the immediate parties, as it pertains to the extent to which parties can contractually agree to settle all disputes arising from an employment relationship through a comprehensive settlement, and the circumstances under which such settlements may be challenged or overturned. The law must carefully balance upholding the integrity of freely negotiated settlements with safeguarding employees from unconscionable agreements or those that contravene fundamental public policy. After thoughtfully considering these factors, I am satisfied that the settlement agreements in this case are clearly within the scope of enforceable contracts that should be upheld.

Issues For Determination

[4] I identify the following six core issues that require determination in this matter. These issues are not merely technical or procedural, but go to the heart of fundamental principles of contract law, employment law, and public policy. The proper resolution of these issues will determine not only the outcome of this particular dispute, but will also provide guidance on the enforceability of settlement agreements in analogous situations. The issues are as follows:

(i) issue 1: Whether the SA and the memorandum constitute a single integrated settlement transaction that must be interpreted together as complementary documents forming one cohesive agreement, or whether they are, as the defendant asserts, separate and independent agreements with no necessary connection beyond coincidental timing;

(ii) issue 2: Whether valid and sufficient consideration was provided by the plaintiff for the SA, or whether, as the defendant argues, the settlement sum was paid exclusively for the memorandum such that the SA is void for want of consideration;

(iii) issue 3: Whether the SA and/or the memorandum are voidable on the grounds that the defendant's consent was vitiated by economic duress and/or undue influence exerted by the plaintiff, rendering the agreements liable to be set aside at the election of the defendant;

(iv) issue 4: Whether the SA and/or the memorandum are void *ab initio* on the grounds of fraud, specifically fraud allegedly perpetrated by the plaintiff in the NOT concerning the status of the Department of Occupational Safety and Health's investigation (DOSH);

(v) issue 5: Whether the SA and/or the memorandum are void on the grounds of illegality or as being contrary to public policy, particularly on the basis that they purportedly stifle criminal prosecution, violate the defendant's statutory rights under the WPA 2010, contravene the OSHA 1994, or otherwise offend provisions of the PC; and

(vi) issue 6: Whether, assuming the SA and Memorandum are valid and enforceable, the defendant has breached the terms thereof by commencing and continuing with the originating summons in the Shah Alam High Court bearing case number WA-24-1408-07-2024 (OS 1408) and the application for private prosecution in the Magistrates' Court, or whether, as the defendant contends, these proceedings fall outside the scope of the prohibitions contained in the agreements.

Findings Of Fact

Background To The Dispute

[5] The defendant was employed by the plaintiff company, a major corporation in the oil and gas industry, under a written contract of employment dated 28 August 2020. The evidence shows that the defendant held a Senior Technical position and was responsible for significant operational matters. According to all accounts, including those of the defendant himself, he was a competent and valued employee for a considerable period of his employment. The defendant's own performance appraisals, which are included in the evidence before me, demonstrate consistently satisfactory to good performance ratings. His immediate supervisor, Robert Jozef Hendrik Houben, who has submitted an affidavit in these proceedings, confirms the defendant's technical competence and dedication during the period when their professional relationship was harmonious. This background is important because it establishes that the subsequent deterioration of the employment relationship and the eventual termination cannot be attributed to any long-standing pattern of poor performance or incompetence. Instead, the termination resulted from specific incidents and alleged misconduct that occurred in the later period of the employment.

[6] The circumstances leading to the termination are disputed between the parties, but for now, the following undisputed facts emerge from the evidence. During his employment, the defendant became concerned about workplace safety issues, especially regarding a "near-miss incident" that occurred around 22 August 2021. The defendant genuinely believed that this incident raised serious safety concerns that required investigation and corrective action. The defendant reported this matter to the DOSH, the statutory body responsible for workplace safety regulation. This is not in dispute. What is contested is the outcome of DOSH's investigation and the

plaintiff's response to the defendant's complaints. According to the plaintiff, DOSH conducted an investigation and then notified the plaintiff *via* its online portal that the investigation was complete and that no further action was needed. The defendant disputes the existence or authenticity of this notification but has not provided any evidence from DOSH to support its claim. The defendant argues that DOSH's investigation was incomplete or inadequate, and that the plaintiff falsely represented its status. I will return to this issue when addressing the fraud allegation.

[7] What is clear from the evidence is that, following the defendant's reports to DOSH and his persistent complaints about safety matters, the relationship between the defendant and the plaintiff's management deteriorated substantially. The plaintiff's position, as detailed in the show cause letter (SCL) and subsequent NOT, is that the defendant's conduct became increasingly problematic and disruptive. Specifically, the plaintiff alleges that the defendant breached company policies, engaged in insubordination by refusing to follow lawful and reasonable instructions from his supervisors, caused disruption among his colleagues through confrontational behaviour, and failed to perform assigned tasks competently and on time. These allegations are detailed in the documentary evidence, particularly in the show cause letter issued to the defendant on 3 August 2022, which invited the defendant to explain his conduct and show cause why disciplinary action should not be taken against him. The defendant disputes these allegations and asserts that they were pretextual – that is, that the real reason for his termination was retaliation for his whistleblowing activities in reporting safety concerns to DOSH. This is a factual dispute that I need not resolve definitively for the present application, as the question is not whether the termination was justified but whether the settlement agreements that followed are valid and enforceable.

[8] Following the SCL, the plaintiff conducted what it describes as a fair and thorough internal inquiry into the allegations against the defendant. The defendant disputes the fairness of this inquiry and contends that he was not given an adequate opportunity to defend himself or to present his version of events. Again, the merits of these competing contentions need not be definitively resolved here. What is undisputed is that following the inquiry, the plaintiff concluded that the allegations were substantiated and that the appropriate disciplinary action was termination of employment. Accordingly, on 24 November 2022, the plaintiff issued the not to the defendant, terminating his employment with immediate effect but providing payment of RM95,584.89 representing three months' salary *in lieu* of notice. The defendant does not dispute receiving this payment.

The Representation To The IRD

[9] Unsatisfied with his termination, and maintaining his position that the termination was unjust and constituted retaliation for whistleblowing, the defendant exercised his statutory right under s. 20 of the Industrial Relations Act 1967 (IRA 1967) to file a representation for unjust dismissal with the IRD. This representation was duly filed and registered with the IRD office in Shah Alam.

[10] In accordance with the statutory process, the IRD fixed a date for conciliation and notified both parties to attend. The parties were required to attend before an Assistant Director of the IRD, Puan Nurul Nadieya binti Nani, who the conciliation officer assigned to the case was. It is clear from the evidence that both parties attended the conciliation on the appointed date, namely 6 April 2023. What transpired at that conciliation, and the circumstances surrounding the execution of the two agreements that are now in dispute, form the crux of this case.

Negotiations Leading To Settlement

[11] The evidence indicates that there were communications between the parties and the IRD officer during the period leading up to the scheduled conciliation date. These communications are essential to understand the context in which the two agreements were made and the parties' intentions. The email correspondence presented offers a clear insight into the plaintiff's position during the settlement negotiations. In particular, the email dated 28 March 2023 from the plaintiff's representative to the IRD officer (see: exh. P57 of encl. 11). This email is highly significant and merits careful review. In this email, the plaintiff's representative explicitly informed the IRD officer that the plaintiff was willing to settle the matter, but only under certain conditions. Specifically, the email clearly stated that there would be "no settlement" at the IRD unless the defendant agreed to execute the SA, in addition to the memorandum, which would be recorded at the IRD. It further emphasised that this condition – the execution of the SA – was non-negotiable and a prerequisite for the plaintiff to agree to any settlement. The email also stated that if the defendant was unwilling to execute the SA, the plaintiff was prepared to continue the conciliation process and, if necessary, refer the matter to the IC for adjudication. In essence, the plaintiff made it unmistakably clear that it maintained an "all or nothing" stance: either the defendant agreed to settle on the plaintiff's terms (which included both the memorandum and the SA), or there would be no settlement, and the case would proceed through the statutory process.

[12] This email demonstrates beyond any doubt that the plaintiff regarded the SA and the memorandum as inextricably linked as two components of a single settlement package. The plaintiff did not offer to settle the IRD representation on the terms of the memorandum alone. The email shows that

the IRD officer was fully informed of this position and that the defendant had a clear alternative course of action where he could refuse to sign the SA and continue with his representation.

[13] The evidence also includes an email dated 3 April 2023 from the defendant to the IRD officer (see: exh. P57 of encl. 11). This email is equally significant, as it shows the defendant's understanding and state of mind on the eve of the conciliation. In this email, the defendant acknowledged that he had been informed of the plaintiff's requirement that he signs the SA as a condition of settlement. He described this as an "essential criterion" that the plaintiff had stipulated. He further acknowledged that if he did not agree to sign the SA, there would be "no settlement" and the case would be referred to the IC. Significantly, the defendant did not, in this email, protest against this requirement or suggest that it was unfair or improper. He did not say that he felt coerced or that he had no choice but to accept. Rather, the email's tone suggests he understood the plaintiff's position and was seeking guidance from the IRD officer on how to proceed. The IRD officer, it appears, explained to the defendant that the decision was his to make – that he could agree to the plaintiff's terms or he could refuse and continue with his representation. This email is highly damaging to the defendant's current position because it shows that, on 3 April 2023, just three days before executing the agreements, the defendant fully understood the nature of the proposed settlement, the conditions attached to it, and his alternative options. He cannot now claim that he was surprised, misled, or coerced.

[14] These pre-contractual communications establish that: (i) the plaintiff consistently treated the settlement agreement and the memorandum as linked documents forming a single settlement package; (ii) the defendant was fully informed of the plaintiff's requirements and conditions; (iii) the defendant had a clear alternative: he could refuse to settle and continue with his representation; and (iv) the IRD officer was fully aware of the arrangement and did not object to it.

Execution Of The Agreements

[15] On 6 April 2023, the scheduled conciliation took place at the IRD office in Shah Alam. Both parties attended. The evidence shows that on this date, two documents were executed: the memorandum and the SA. The memorandum is exhibited as exh. P55 in encl. 17. It is a relatively brief document in Bahasa Malaysia (BM) that records the parties' agreement to settle the representation. It contains several clauses, but the most relevant for present purposes is cl. ii, which provides in substance that the parties agree not to make any claims against each other "related to the representation" (yang berkaitan dengan representasi perayu). The memorandum was signed by both parties and was witnessed by the IRD officer, Puan Nurul Nadieya binti Nani, who affixed her signature and official stamp. This is the standard

practice for settlements reached at the IRD where the IRD officer acts as a witness to ensure that both parties have freely and voluntarily agreed to the terms.

[16] The SA (see: exh. P56 in encl. 17) is a more detailed document in English. The key provisions are: First, the preamble recites that the plaintiff employed the defendant, that his employment was terminated, that following the termination, the defendant filed a representation for unjust dismissal with the IRD, and that the parties have agreed to settle on the dispute on the terms set out in the agreement. Second, cl. 1.2 provides that the plaintiff will pay the defendant a settlement sum of RM1,226,988. Third, and most importantly for present purposes, cl. 1.3 provides that in consideration of the settlement sum, the defendant "acknowledges, agrees and undertakes that the execution of this agreement and the payment of the settlement sum (SS) in the manner set out herein constitutes a full and final settlement and a waiver of all claims, complaints, demands, or causes of action whatsoever (whether in contract, tort or otherwise, and whether related to employment or not) that the employee has or may have against the company or any of the company's related entities, subsidiaries, affiliates, officers, directors, agents or employees, including any claims, complaints or representations made to any government bodies or agencies". This is an expansive waiver clause. It purports to extinguish not just claims for unjust dismissal, but "all claims" of any kind, whether related to employment or not, whether in contract, tort, or otherwise, against the plaintiff and its extensive network of related entities. Fourth, the settlement agreement contains various ancillary provisions regarding confidentiality, non-disparagement, and general administrative matters.

[17] The SA bears the signatures of both the plaintiff and the defendant. It is dated 6 April 2023 and this is a matter of some significance. There is a dispute about whether the IRD officer witnessed the SA. The defendant contends that Puan Nurul Nadieya was not present when the settlement agreement was signed, pointing out that, unlike the memorandum, the SA does not bear the IRD officer's signature and stamp. The plaintiff, in its written submissions, suggests that the IRD officer was present at the signing of both documents, but has not adduced any direct evidence to prove this. There is no affidavit from the IRD officer herself, and neither party has called her as a witness.

[18] Based on the evidence before me, I cannot definitively determine whether the IRD officer was physically present when the SA was signed. However, I do not view this as a significant issue. The key point is whether the defendant signed the SA voluntarily and with understanding of its terms, not whether an IRD officer witnessed the signature. The IRD officer's role is to assist with settling the representation before the IRD – the

memorandum. The SA is a separate civil contract between the parties. There is no legal requirement for it to be witnessed by an IRD officer or anyone else (unless the parties explicitly specify such a requirement, which they did not). The lack of the IRD officer's signature on the SA, in my opinion, does not undermine the validity or enforceability of that agreement.

[19] What is clear and undisputed is that both documents – the memorandum and the SA – were signed by the defendant on 6 April 2023. The defendant does not dispute that the signatures are his. He does not claim that the signatures were forged or that he was physically forced to sign. His case, rather, is that although he signed, his consent was vitiated by duress, undue influence, or fraud, or that the agreements are void for illegality or lack of consideration. I shall address each of these contentions in due course. For now, it suffices to note that the defendant voluntarily affixed his signature to both documents on the same day at the same location. The documents were clearly intended to be executed together as part of a single settlement occasion. This supports the plaintiff's contention that the transactions constitute a single transaction.

Payment Of The SS

[20] Following the execution of the agreements, the plaintiff proceeded to fulfil its obligations by making the settlement payment to the defendant. The evidence indicates that on or about 1 June 2023, the plaintiff paid the defendant a sum of RM1,226,988 after tax deductions. The payment was transferred to the defendant's bank account. The payment advice (see: exh. P58 in encl. 18). The defendant received this payment and has retained it to date. He has not attempted to return the money to the plaintiff nor to place it in any form of escrow while the disputes are being resolved.

[21] The defendant makes much of the fact that the payment advice references the memorandum file number (S20/2023/51000/0004) rather than the SA. The defendant argues that this proves the payment was made exclusively for the memorandum, not for the SA, and therefore that the SA lacks consideration.

[22] I reject this argument as overly technical and disconnected from the commercial reality. The payment advice is merely an administrative document for the plaintiff's internal accounting purposes. The reference to the memorandum file number is simply a convenient identifier to link the payment to the IRD case. It does not determine the legal nature or purpose of the payment. The payment advice also includes a description field that labels the payment as "BP settlement" – that is, a settlement payment. The evidence must be considered holistically. The plaintiff paid RM1,226,988 to the defendant on or about 1 June 2023, shortly after executing both the memorandum and the SA. The amount paid matches exactly the amount specified in cl. 1.2 of the SA. The close timing of the payment after the

A agreements, the matching amount, and the description of the payment as a "settlement" all strongly indicate that the payment was made pursuant to the overall settlement arrangement encompassing both agreements. The defendant's attempt to characterise the payment as solely for the memorandum is artificial and untenable.

B **[23]** It is significant that when the defendant received this substantial payment, he did not contemporaneously raise any objection or query. He did not write to the plaintiff stating that he had received RM1,226,988 under the memorandum, but he did note that he had not received any payment under the SA. The defendant accepted the payment without demur. This conduct C is entirely consistent with the defendant's understanding that the payment satisfied the plaintiff's obligations under both agreements. If the defendant genuinely believed that the SA was a separate transaction requiring separate consideration, one would expect him to have raised this immediately upon receiving a payment that referenced only the memorandum. His failure to do D so is telling.

Post-Settlement Conduct

[24] For some months following the settlement, there was no dispute between the parties. The defendant had received the settlement sum, the E plaintiff considered the matter closed, and the representation before the IRD was withdrawn as part of the settlement. However, in mid-2024, more than a year after the settlement, the defendant began to take steps that the plaintiff contends constitute breaches of the settlement agreements. Specifically, the defendant took two main actions that give rise to the present dispute.

F **[25]** First, on or about 23 July 2024, the defendant filed an originating summons in OS 1408. OS 1408 names the plaintiff and two of its related entities as the defendants. The reliefs sought in that OS 1408 include: (i) an injunction restraining the defendants from continuing any disciplinary action or termination; (ii) an order rescinding, setting aside, or declaring void the G SCL and NOT; (iii) an order directing the DOSH to initiate an investigation into the near-miss incident; (iv) punitive or exemplary damages or compensation of RM5 million (USD equivalent); (v) costs; and (vi) any other relief deemed appropriate. The grounds stated in support of this OS include alleged violations of the WPA 2010 and s. 27 of the OSHA 1994. Essentially, the defendant is using this civil proceeding to challenge the H validity of their termination and to seek reinstatement or compensation. The plaintiff contends that this clearly breaches both cl. 1.3 of the SA, which waives all claims, and cl. (ii) of the memorandum, which prohibits claims related to the representation for unjust dismissal.

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[26] Second, around the same time, the defendant submitted an application for prosecution by private individuals in the Shah Alam Magistrates' Court (SAMC) under s. 401A of the Criminal Procedure Code (CPC). This application requests permission to initiate private criminal proceedings against the plaintiff and its associated entities for alleged offences under the OSHA 1994, the WPA 2010, and the PC. The defendant submitted a detailed complaint supporting this application, outlining various allegations against the plaintiff, including claims that his termination was unlawful and constituted detrimental action in retaliation for whistleblowing, as well as allegations that the plaintiff and its officers committed offences under OSHA 1994 by failing to ensure workplace safety. The SAMC dismissed the application, citing the defendant's failure to obtain the required approval from the Public Prosecutor (PP) for private prosecutions. The defendant has since appealed this decision to the High Court, where the appeal is currently pending.

[27] The plaintiff contends that even the attempt to initiate private prosecution constitutes a breach of the settlement agreements, regardless of whether the prosecution proceeds or succeeds.

[28] In addition to these two legal proceedings, the defendant also caused a letter of demand dated 12 June 2024 (LOD) to be issued, addressed to the plaintiff. In this letter, the defendant's solicitors asserted that the SA was void on various grounds including coercion, and demanded that the plaintiff take remedial action, failing which legal proceedings would be commenced. This letter put the plaintiff on notice of the defendant's intention to challenge the settlement and to pursue claims against the plaintiff. The plaintiff, through its solicitors, responded, rejecting the defendant's allegations and asserting that the settlement agreements were valid and binding. The parties were unable to resolve their differences through correspondence, leading the plaintiff to file the present OS herein.

[29] The plaintiff's position is straightforward: by filing the OS 1408 and the private prosecution application, the defendant has clearly breached his contractual undertakings under both the SA and the memorandum. The defendant agreed not to bring "all claims, complaints, demands, or causes of action whatsoever" against the plaintiff and its affiliates, and agreed not to make any claims "related to the representation". Yet, he has filed a civil suit challenging his termination and seeking damages. He has filed a criminal complaint seeking to prosecute the plaintiff for alleged offences arising from the same factual circumstances. These actions, says the plaintiff, are in flagrant breach of the settlement and must be restrained by injunction.

[30] The defendant's response is multi-faceted. At the threshold, he denies that he is bound by the SA at all, because it is void or voidable for the various reasons I have outlined. But even if the agreements are valid, the defendant

A argues that he has not breached them because: (i) the memorandum only prohibits claims for "unjust dismissal" at the IC, not other types of claims in other forums; (ii) his claims under the WPA 2010, OSHA 1994 and PC are distinct causes of action that were not waived by the settlement; (iii) he has a statutory right to pursue whistleblower remedies under WPA 2010 and
B criminal complaints under OSHA 1994, and these rights cannot be contracted away; and (iv) the SA, to the extent it purports to bar such claims, is void as being contrary to public policy.

[31] These, then, are the essential facts giving rise to the dispute.

C **Legal Analysis And Determination**

Issue 1: Whether The Settlement Agreement And Memorandum Form A Single Transaction

[32] The defendant contends that the SA and the memorandum are two separate and independent agreements that happen to have been executed on
D the same day, but which have no necessary legal connection to each other. According to the defendant, the memorandum is the agreement reached at the IRD to settle the unjust dismissal representation. In contrast, the SA is a separate contract that the plaintiff sought to impose on the defendant as an additional condition.

E **[33]** The defendant points to various features of the two documents to support this contention: they are separate physical documents, they are drafted in different languages (the memorandum in BM and the SA in English), they were not cross-referenced in their text, they have different levels of detail and complexity, and most importantly, they contain what the
F defendant characterises as contradictory or inconsistent clauses. The defendant argues that cl. (ii) of the memorandum prohibits only claims "related to the representation" for unjust dismissal, which is a limited prohibition consistent with s. 20(4) of the IRA 1967. By contrast, cl. 1.3 of the SA purports to waive "all claims whatsoever", including claims
G unrelated to employment. These clauses, argues the defendant, are so different in scope that they cannot possibly be part of the same agreement or transaction. The defendant further argues that if the parties had intended the two documents to be read together, they would have included express cross-references or integration clauses stating that they form a single agreement.

H **[34]** From the defendant's perspective, if the two agreements are separate, then each must be supported by independent consideration. The defendant concedes that the memorandum is supported by consideration in the form of the SS of RM1,226,988. However, the defendant argues that no separate consideration was provided for the settlement agreement, and therefore, the
I SA is void for want of consideration and cannot be enforced. The defendant relies on the Federal Court decision in *Kuala Dimensi Sdn Bhd v. Port Kelang*

Authority [2025] 3 CLJ 497; [2025] 2 MLJ 238, which held that a variation agreement must be supported by fresh consideration to be valid. The defendant argues that the same principle applies here: if the SA is a separate agreement distinct from the memorandum, it requires its own consideration.

Legal Principles On Construction Of Multiple Documents

[35] The question of when multiple documents should be construed together as forming a single contract has been addressed in numerous authorities. The *classicus* is the principle in *Mohamed Isa & Ors v. Abdul Karim & Ors* [1970] CLJU 82; [1970] 1 LNS 82; [1970] 2 MLJ 165 where the Federal Court held:

> It is a settled rule of construction that where several documents forming part of one transaction are executed contemporaneously, all the documents must be read together as if they are one (see *Manks v. Whiteley* [1912] 1 Ch 735).

[36] The judgment goes on to quote with approval the judgment of Terrell J in *Idris Hj Mohamed Amin v. Ng Ah Siew* [1935] CLJU 15; [1935] 1 LNS 15; [1935] MLJ 257 at 259:

> It is a well-known rule of construction that where the arrangement between parties is contained in several documents all executed simultaneously, all the documents must be read together to ascertain the intention of the parties, and it is a corollary from this that the intention must be gathered from the documents as a whole.

[37] This principle has been consistently applied in subsequent cases and is regarded as settled law. The rationale underlying the principle is that contracts are made to give effect to the parties' commercial intentions, and those intentions must be ascertained objectively from the totality of the contractual documents and surrounding circumstances, not by artificially focusing on individual documents in isolation. Where parties have executed multiple documents on the same occasion and as part of the same negotiation, it would be contrary to commercial common sense to treat each document as creating separate obligations in watertight compartments, with no reference to the others. Such an approach would often lead to absurd results and would fail to give effect to what the parties were actually trying to achieve.

[38] The key question, then, is whether the multiple documents were executed "contemporaneously" and whether they relate to the "same transaction". If both these conditions are met, the documents must be read together. The idea of "contemporaneous" execution does not require that the documents be signed at exactly the same moment or with the same pen. It means that they were executed on the same occasion, as part of the same overall agreement. The idea of "same transaction" means that the documents aim to achieve the same commercial purpose or resolve the same dispute.

The documents do not need to be identical in their terms or even consistent in their level of detail. It is quite common for complex commercial arrangements to be documented across multiple instruments. For example, a sale and purchase agreement, a shareholders' agreement, and various ancillary documents such as deeds of indemnity or non-compete agreements may all be executed upon completion of a corporate acquisition. All these will be construed together, even though they address different aspects of the transaction.

[39] The principle applies also to settlement agreements because settlements often involve multiple components that are documented separately. For example, in a settlement of a business dispute, the parties might execute a settlement agreement providing for payment of money, a deed of release extinguishing claims, and a confidentiality agreement. All three would be construed together as part of a single settlement transaction. The fact that they are separate documents does not make them separate transactions if they were all executed as part of resolving the same underlying dispute.

[40] The principle applies even if the multiple documents are not expressly cross-referenced in their text. The absence of an integration clause or cross-reference does not preclude the court from construing multiple documents together if the factual circumstances show they were part of the same transaction. The court looks to the objective facts – when were the documents executed? For what purpose? As a result of what negotiations? Do they relate to the same subject matter? – rather than relying solely on the textual content of the documents themselves. This makes sense, because parties often execute documents without adverting to the technical question of whether express cross-references are needed. The law should give effect to substance over form.

Application To The Present Facts

[41] Applying these principles to the facts of the present case, I have no hesitation in concluding that the SA and the memorandum were executed contemporaneously as part of a single settlement transaction and must therefore be construed together.

[42] First, the documents were unquestionably executed contemporaneously. Both bear the date 6 April 2023. Both were signed on that date at the IRD office during the conciliation proceedings. There is no suggestion that one was signed hours or days before the other, or that they were signed in different locations, or that there was any temporal or spatial separation between them. They were signed on the same occasion, in the same place, as part of the same event. This clearly satisfies the requirement of contemporaneous execution.

[43] Second, the documents relate to the same transaction – namely, the settlement of the defendant's representation for unjust dismissal at the IRD. The memorandum expressly recites that it concerns the representation filed by the defendant at the IRD. The preamble to the SA similarly recites that the defendant had filed a representation for unjust dismissal at the IRD and that the parties have agreed to settle "the dispute" (defined by reference to the termination and subsequent representation). Both documents are directed at resolving the same underlying controversy – the dispute arising from the defendant's termination and his claim for unjust dismissal. They are not addressing different disputes or different transactions. They are both part of the resolution of a single employment dispute.

[44] Third, and most compellingly, the pre-contractual communications establish beyond any doubt that the parties understood and intended that both documents would be executed together as a package. The email correspondence, which I have already summarised, shows that the plaintiff made it an express condition of settlement that the defendant must sign both the memorandum and the SA. The plaintiff unequivocally stated that there would be "no settlement" unless the defendant agreed to the SA. This was communicated to both the IRD officer and the defendant himself. The defendant acknowledged this condition in his email of 3 April 2023, describing it as an "essential criterion". He knew that the plaintiff offered to settle on either basis: both documents or not at all. This is not a case where the parties happened to sign two unrelated agreements on the same day. On the contrary, the evidence shows a clear and deliberate linking of the two documents by the plaintiff as part of its settlement terms, which linkage was communicated to and understood by the defendant.

[45] Fourth, there was a single overall consideration for the settlement, namely the payment of RM1,226,988 by the plaintiff to the defendant. This sum was paid shortly after the execution of both agreements. The amount paid corresponds to the amount stated in the SA. While the payment advice references the memorandum file number for administrative convenience, the substance of the matter is that a single lump-sum payment was made to settle all disputes. The defendant did not receive one payment under the memorandum and a separate payment under the SA. He received a single payment, which was intended to satisfy the plaintiff's obligations under the overall settlement arrangement. This unity of consideration supports the conclusion that there was a single transaction.

[46] Fifth, the commercial purpose and effect of the two documents, viewed objectively, is to achieve a comprehensive settlement. The memorandum records the settlement of the representation at the IRD and provides that the parties will not make claims related to that representation. The SA provides for payment of the settlement sum and contains broader releases and covenants, including a general waiver of claims. These are

A complementary provisions. The memorandum deals with the specific statutory proceeding (the IRD representation), while the SA provides a broader framework for resolving all disputes arising from the employment relationship. Far from being inconsistent or contradictory, they are mutually reinforcing. Together, they achieve a comprehensive peace. Viewed
B separately, each would be incomplete – the memorandum on its own would leave open the possibility of claims in other forums or on other grounds; the SA on its own would not formally dispose of the pending IRD representation. It is only when the two are read together that the full picture emerges: the parties intended to settle everything, including the IRD
C representation and all other potential claims.

[47] Sixth, construing the two documents together aligns with common sense and commercial practice. The plaintiff was resolving a dispute with a former employee who had raised various complaints and allegations. The plaintiff sought finality and certainty – that having paid a substantial
D settlement amount, it would not face further claims or legal actions from the defendant. Conversely, the defendant was relinquishing his representation at the IRD and agreeing not to pursue further claims in exchange for the settlement sum. This is a typical settlement arrangement: money in exchange for peace. Such settlements usually involve broad releases because the paying
E party wants to ensure they are buying peace across all areas, not just the immediate dispute. It would make no commercial sense for the plaintiff to pay RM1,226,988 solely to settle the IRD representation (which might or might not succeed and which, even if successful, might yield a lower award), while leaving the defendant free to pursue the same or related claims
F elsewhere or on other grounds.

The Defendant's Arguments Considered

[48] The defendant's first argument is that the two documents are in different languages and have different formats, which supposedly indicates they were not intended to be linked. I reject this argument. The difference
G in language is easily explicable: the memorandum was prepared by or with the involvement of the IRD officer for recording at the IRD, where the working language is in BM; the SA was prepared by the plaintiff's lawyers is in English, which is the common language of commercial contracts, particularly for a multinational corporation. The difference in format and
H level of detail is similarly explicable: the memorandum is a relatively brief and informal document suitable for recording a settlement at the IRD; the SA is a more detailed and legalistic document typical of commercial settlement agreements drafted by lawyers. These differences are matters of form and style, not substance. They do not indicate that the documents were
I unconnected. Indeed, it is quite common practice for disputes that originate in statutory form (such as the IRD, the IC or tribunals) to be settled by way

of a combination of a formal settlement or consent order in the statutory proceeding plus a separate private settlement agreement governing the broader terms of the settlement. This does not make them separate transactions; it simply reflects the practical need to satisfy the requirements of different legal regimes.

[49] The defendant's second argument is that the two documents contain contradictory or inconsistent clauses and therefore cannot be part of the same agreement. Specifically, the defendant highlights the difference between cl. (ii) of the memorandum, which prohibits claims "related to the representation," and cl. 1.3 of the SA, which waives "all claims whatsoever". The defendant contends that these clauses are so different in scope that they are intended as alternatives rather than cumulative provisions. I cannot accept this argument. The clauses are not contradictory; they are complementary. Clause (ii) of the memorandum is narrower in scope and is specifically addressed to the representation at the IRD – it states that once the representation is settled, the parties will not pursue claims related to it. This is the standard form of settlement clause in IRD cases, reflecting the requirement under s. 20(4) of the IRA 1967 that, after an employee receives compensation under a settlement or award, he may not bring a further claim for unjust dismissal. Clause 1.3 of the SA is broader and provides an additional layer of protection for the plaintiff by waiving all claims of any kind. This broader waiver is not inconsistent with the narrower clause in the memorandum; rather, it supplements and extends it. The structure is clear where the memorandum settles the specific IRD representation, while the SA settles everything else as well. This is a logical and coherent structure that advances the plaintiff's objective of a comprehensive settlement.

[50] To put the matter another way, cl. 1.3 of the SA includes and subsumes the protection afforded by cl. (ii) of the memorandum. Any claim that is "related to the representation" is necessarily also a claim that falls within "all claims whatsoever". The broader waiver encompasses the narrower one. There is no contradiction here, just as there is no contradiction in a contract that provides both "the seller shall deliver the goods on Monday" and "the seller shall deliver the goods within seven days" – the first obligation is simply a specific instance of the second. If the defendant's argument were correct – if two clauses with different scopes could never coexist in related agreements – then it would be impossible to have any settlement agreement with layered or graduated releases, which are in fact very common. Settlement agreements often contain general releases supplemented by specific releases relating to particular matters. This does not indicate separate transactions; it simply shows that the drafter wanted to be belt-and-braces to ensure particular matters were covered.

[51] The defendant's third argument is that the SA and memorandum were not explicitly cross-referenced in their text, and this supposedly proves they were not intended to be linked. Again, I find this argument lacks merit. The absence of explicit cross-referencing is not decisive. As explained, the court considers the objective circumstances surrounding the execution of the documents, not just their textual content. In any case, both documents do refer to the same underlying dispute (the representation at the IRD arising from the termination), so there is an implicit connection even without an explicit cross-reference. Additionally, the pre-contractual correspondence explicitly links the two documents by making the execution of the SA a condition of agreeing to the memorandum. The parties themselves cross-referenced the documents during negotiations, even if they did not insert cross-references into the final text. The objective evidence of linkage is overwhelming.

[52] I also reject the defendant's reliance on the *Kuala Dimensi* case. That case concerned a variation agreement executed later in time to modify the terms of an existing contract. The Federal Court held that such a variation requires fresh consideration. That principle has no application here. The present case does not involve a variation of an existing contract. Both the SA and the memorandum were executed at the same time as part of the original settlement. There is no pre-existing contract that is being varied. The *Kuala Dimensi* principle applies where parties have an existing contractual relationship and subsequently agree to change the terms; in such a case, the variation is a new agreement that requires new consideration. But where multiple documents are executed simultaneously as part of a single new bargain, as here, the requirement is simply that the overall bargain be supported by consideration. There is no need for each document to have its own separate consideration, because they are all part of the same transaction supported by the same overall consideration. The *Kuala Dimensi* case is distinguishable on its facts and does not assist the defendant.

Issue 2: Whether Valid Consideration Was Provided The Defendant's Contention

[53] The defendant's second line of defence is that even if the SA was intended to be executed, it lacks consideration and is therefore void and unenforceable. The defendant's argument proceeds as follows. The SS of RM1,226,988 was paid by reference to the memorandum, as evidenced by the fact that the payment advice references the memorandum file number (S20/2023/51000/0004). Therefore, the defendant argues, the SS constitutes consideration for the memorandum only, not for the SA. The SA is thus a separate contract that has no consideration supporting it. As consideration is one of the essential elements of a valid contract under s. 2 of the Contracts Act 1950 (CA 1950), and as s. 26 of the CA 1950 provides that an agreement made without consideration is void (subject to certain exceptions that do not apply here), it follows that the SA is void and unenforceable. The defendant

relies on *Kuala Dimensi*, which held that a variation agreement must be supported by fresh consideration to be binding. The defendant argues that the same principle applies to any contract, including the SA: if it is a separate agreement distinct from the memorandum, it requires its own consideration.

Why This Argument Fails

[54] Having established that the SA and memorandum constitute a single transaction, the defendant's argument fails at the outset. When multiple documents form part of one transaction, the consideration need only support the entire transaction; there is no requirement for separate consideration for each document. This is a fundamental principle of contract law. Consideration is the price paid for a promise. When parties agree to a single bargain documented in multiple instruments, the consideration is for the overall agreement, not each document. It would be illogical to argue that the deed of assignment lacks consideration merely because the purchase price appears in the sale and purchase agreement (SPA) rather than in the deed of assignment (DOA). Similarly, in this case, the settlement sum constitutes consideration for the entire settlement arrangement, including both the memorandum and the SA.

[55] For argument's sake, if the two documents were separate agreements, the defendant's argument would still fail because there is ample consideration supporting the SA. The consideration for the SA consists of the following elements, each of which is sufficient on its own, and which cumulatively provide the consideration:

(i) the plaintiff paid RM1,226,988 to the defendant. This is valuable consideration moving from the plaintiff to the defendant. The defendant's argument that this payment was exclusively for the memorandum and not for the SA is, with respect, untenable. It is contradicted by the terms of the SA itself, which in cl. 1.2 of the SA expressly provides that the plaintiff will pay the SS. If, as the defendant contends, the SS was not consideration for the settlement agreement, then cl. 1.2 of the SA would be meaningless. Why would the settlement agreement contain a clause obligating the plaintiff to pay a sum if that sum was already owing under a different agreement? The natural and obvious interpretation is that cl. 1.2 of the SA reflects the plaintiff's promise to pay the settlement sum pursuant to the SA. The fact that the payment advice happens to reference the memorandum file number for administrative purposes does not alter the legal nature of the payment. The defendant received RM1,226,988. That money came from the plaintiff as part of the overall settlement. It constitutes valid consideration;

(ii) the SA contains, by necessary implication, a promise by the plaintiff not to pursue counterclaims against the defendant. The evidence shows that during the employment relationship, various disputes and allegations were going both ways. The plaintiff alleged that the defendant had committed misconduct. It would have been open to the plaintiff to pursue claims against the defendant like the claims for damages for breach of contract, breach of fiduciary duty, or other employment-related claims. By entering into the settlement, the plaintiff gave up any such potential claims. This forbearance constitutes valid consideration. It is well-established that forbearance to sue, even on a claim that might not ultimately succeed, constitutes good consideration provided the claim is not frivolous or vexatious and is pursued in good faith (see: *Miles v. New Zealand Alford Estate Co* [1886] 32 Ch D 266). Here, the plaintiff's forbearance to pursue potential claims against the defendant is valid consideration for the defendant's promises in the SA;

(iii) the defendant gave valuable promises in the SA, including the promise to waive all claims and the various covenants regarding confidentiality and non-disparagement. These promises were given in exchange for the settlement sum and the plaintiff's forbearance. This is a classic bilateral contract: the plaintiff's promises (to pay the settlement sum and not to pursue counterclaims) are consideration for the defendant's promises (to waive claims and comply with the covenants), and *vice versa*. Each side's promises are consideration for the other side's promises. This is the very essence of contractual consideration; and

(iv) more broadly, the consideration for the SA lies in the mutual agreement of the parties to settle their disputes and avoid the costs, risks, and uncertainties of litigation. This is well-recognised as a valid consideration. Settlement agreements are universally recognised as binding contracts, and the consideration for them consists precisely in the mutual promises to compromise disputed claims and to avoid litigation. Each party gives up something in exchange for the certainty of settlement. This is a valuable exchange and constitutes ample consideration.

[56] For all these reasons, there is consideration supporting the SA, whether viewed as part of a single transaction with the memorandum or as a separate agreement (my alternative finding). The defendant's argument on lack of consideration is without merit.

The Payment Advice Is Not Determinative

[57] The defendant emphasises that the payment advice references the memorandum file number rather than the SA. He contends that this demonstrates the payment was for the memorandum only. However, this argument is unconvincing for several reasons. First, as I have clarified, the

payment advice is an administrative document used for internal accounting purposes. The reference number serves only as a convenient identifier to link the payment to the relevant matter and has no legal significance regarding the payment's purpose or legal nature. Second, the payment advice also describes the payment as "BP settlement" – a settlement payment. This suggests that the payment was intended for the overall settlement, not for any single document. Third, the amount paid (RM1,226,988 after tax) exactly matches the amount specified in cl. 1.2 of the SA, providing strong evidence that the payment was made in accordance with the SA. Fourth, and most significantly, when the defendant received this payment, he did not raise any objection or inquiry. He did not write to the plaintiff stating, "I note you have paid me under the memorandum, but what about the separate payment due under the SA?" His silence is telling. It indicates that the defendant understood the payment as fulfilling the plaintiff's obligations under the entire settlement agreement.

[58] If the defendant's argument were correct, that if the SS was exclusively for the memorandum and there was no consideration for the SA, then the defendant would have been entitled to demand additional payment under the SA. Yet he made no such demand. This is inconsistent with his current position and supports the inference that the defendant understood the single payment to cover both agreements – or more accurately, to cover the single composite settlement. The defendant cannot now, more than a year later and after having spent or otherwise dealt with the money, claim that the payment was inadequate or misdirected. His contemporaneous conduct in accepting the payment without demur is solid evidence of his understanding that it satisfied all the plaintiff's payment obligations under the settlement.

Issue 3: Economic Duress And Undue Influence The Defendant's Allegations

[59] The defendant alleges that at the time of signing the agreements on 6 April 2023, he was in severe financial distress, having lost his employment and having been unemployed for several months. He alleges that he desperately needed the SS to support himself and his family. He contended that the plaintiff took advantage of this vulnerable position by presenting him with the SA on a "take it or leave it" basis and giving him no realistic alternative but to sign. He alleges that if he had refused to sign, he would have had to continue with his representation at the IRD, which would have taken many more months or years and might ultimately have been unsuccessful, leaving him with nothing. He alleges that in these circumstances, his will was overborne and he had no genuine choice but to submit to the plaintiff's demands. He further alleges undue influence, contending that the plaintiff was his former employer and thus in a position of dominance over him, and that the plaintiff exploited this relationship to procure his signature on unconscionable terms.

A Legal Principles On Economic Duress

[60] Economic duress is a doctrine that allows a contract to be set aside if one party's consent was procured by illegitimate economic pressure such that there was no true consent (see: *Pao On v. Lau Yiu Long* [1980] AC 614). In *Pao On*, Lord Scarman explained at pp. 635 to 636:

B

> Duress, whatever form it takes, is a coercion of the will so as to vitiate consent. Their Lordships agree with the observation of Kerr J in *Occidental Worldwide Investment Corporation v. Skibs A/S Avanti* [1976] 1 Lloyd's Rep 293, 336 that in a contractual situation commercial pressure is not enough. There must be present some factor 'which could in law be regarded as a
> C coercion of his will so as to vitiate his consent.' This conception is in line with what was said in this Board's decision in *Barton v. Armstrong* [1976] AC 104, 121 by Lord Wilberforce and Lord Simon of Glaisdale ... In determining whether there was a coercion of will such that there was no true consent, it is material to inquire whether the person alleged to have been coerced did or did not protest; whether, at the time he was allegedly
> D coerced into making the contract, he did or did not have an alternative course open to him such as an adequate legal remedy; whether he was independently advised; and whether after entering the contract he took steps to avoid it.

[61] This case identifies some critical factors to be considered in
E determining whether economic duress exists: (i) whether the victim protested; (ii) whether he had an alternative course of action available, such as an adequate legal remedy; (iii) whether he was independently advised; and (iv) whether he took steps to avoid the contract soon after entering into it. These are not rigid requirements but rather relevant factors to be considered
F in assessing whether the victim's will was, in fact, overborne. The modern approach recognises that duress exists on a spectrum, and the question is always whether the pressure applied was illegitimate and vitiated consent.

[62] In *JR Joint Resources Holdings Sdn Bhd v. Norhana Sharkhan & Other Cases* [2021] CLJU 1413; [2021] 1 LNS 1413; [2021] MLJU 1652,
G His Lordship Ong Chee Kwan (as he then was) comprehensively reviewed the law of economic duress and stated at paras. 168 to 169:

> [168] The Privy Council (in an appeal from Hong Kong) in *Pao On v. Lau Yiu Long* [1980] AC 614 through the speech of Lord Scarman explained at pages 635-636, the cause of action for economic duress ...
>
> H [169] Based on the aforesaid, to constitute duress, the commercial pressure that is brought to bear on the victim must be such that the victim must have entered the contract against his will, with no alternative course open to him, and must have been confronted with coercive acts by the party exerting the pressure. The facts must disclose that the victim's will
> I was vitiated at the time the impugned agreement was entered into and that the vitiation of his consent was due to the illegitimate pressure exerted on him.

[63] Mere commercial pressure alone is not enough to establish duress. Parties engaged in commercial negotiations often face pressures related to time, finances, and competition. This is the normal give-and-take of commercial practice and does not invalidate consent. For duress to be established, the pressure must be illegitimate, not simply uncomfortable or unwelcome. Additionally, for duress to invalidate consent, the victim must have had no realistic alternative but to submit. If the victim had a reasonable alternative course of action available but chose not to pursue it, this argues against a finding of duress. Moreover, duress requires that the victim's will was actually overborne; it is not sufficient to show that the victim made a poor bargain or agreed to terms that later appeared unfavourable. The key question is whether, at the time of contracting, the victim's freedom of choice was so constrained that their apparent consent was not genuine. Significantly, the subsequent behaviour of the victim is relevant. If the victim protests immediately after signing or takes swift steps to avoid or repudiate the contract, this supports a claim of duress. Conversely, if the victim accepts the contract's benefits without protest, this weakens the claim of duress.

Legal Principles On Undue Influence

[64] Undue influence is a related but distinct doctrine. It applies where one party is in a position to influence the other's decision-making, and uses that position improperly to procure a contract. There are two types of undue influence: actual undue influence, where improper pressure is proved as a matter of fact; and presumed undue influence, which arises in certain relationships of trust and confidence. The burden of proof differs depending on which type is in issue. For actual undue influence, the party alleging it must prove it. For presumed undue influence, once a relationship of trust and confidence is established, the burden shifts to the accused to prove that the transaction was entered into freely.

[65] The requirements for establishing undue influence were comprehensively set out by the High Court in *RHB Bank Bhd v. Singlefine (M) Sdn Bhd & Ors* [2020] 1 CLJ 721; [2019] 11 MLJ 333 whereby the plaintiff must prove: (i) that the defendant held real or apparent authority over the plaintiff, or was a fiduciary, or that the plaintiff's mental capacity was compromised through age, illness, or mental or physical distress (as per s. 16(2) of the Contracts Act 1950 (CA 1950)); (ii) that the defendant used his position to dominate the plaintiff's will; and (iii) that the contract procured by such influence was unfairly advantageous to the defendant.

[66] In the context of employment relationships, undue influence is difficult to establish once the employment has ended. While an employer clearly has authority over an employee during the subsistence of the employment relationship, that authority ceases upon termination. A former employer generally does not have a relationship of trust and confidence with

a former employee that would give rise to presumed undue influence. Actual undue influence would need to be proved, which requires showing that the former employer actually exploited some continuing relationship or vulnerability to dominate the former employee's will.

Application To The Present Facts – No Duress

[67] Applying these principles to the facts of the present case, I find that the defendant has wholly failed to establish economic duress. The evidence does not support a finding that the defendant's will was overborne or that he had no alternative but to sign the agreements. My reasons are as follows.

[68] The most fundamental requirement for establishing duress is that the victim must have had no reasonable alternative but to submit to the illegitimate pressure. In this case, the defendant had an obvious alternative: he could have refused to sign the SA and continued with his representation before the IRD. This alternative was not merely theoretical; it was practical and real. The IRD representation was already filed and proceeding. The conciliation on 6 April 2023 was simply one step in that process. If conciliation was unsuccessful, the matter would automatically be referred to the IC for adjudication. The defendant could have had his day in court, presented his evidence, and obtained a determination on the merits of his unjust dismissal claim.

[69] Furthermore, the evidence demonstrates that the plaintiff explicitly confirmed that this alternative was available. In the email dated 28 March 2023, the plaintiff's representative stated that if the defendant did not agree to the settlement agreement, there would be no settlement, and the plaintiff was willing to continue with the conciliation and subsequent referral to the IC. The plaintiff was not threatening to withdraw from the statutory process or to engage in any conduct that could prejudice the defendant's rights. The plaintiff simply outlined its settlement terms and clarified that if those terms were rejected, the statutory process would proceed. This constitutes legitimate settlement negotiation, not coercion. Parties are entitled to state their settlement terms and to refuse to settle if those terms are not met. The existence of this clear alternative fundamentally undermines the defendant's claim of duress.

[70] The defendant's argument appears to be that continuing with the IRD representation was not a "real" alternative because it would take time and might ultimately be unsuccessful. But this is true of all litigation. Litigation involves delays, costs and risks. That does not mean that a party that chooses to settle rather than litigate has been subjected to duress. Settlement always involves a trade-off: the certainty of settlement versus the uncertainty of adjudication. A party that opts for the certainty of settlement cannot later claim duress merely because the alternative involved risk and delay. If that were the test, virtually all settlement agreements could be challenged on grounds of duress, which would be absurd.

[71] Even if the defendant felt pressured to settle, the pressure came from his own circumstances, not from any illegitimate conduct by the plaintiff. The defendant was unemployed and facing financial difficulties. That is unfortunate, but it does not make the plaintiff's settlement offer illegitimate. The plaintiff was not responsible for the defendant's financial situation. The plaintiff had lawfully terminated the defendant's employment (the termination having been found justified after due inquiry). The plaintiff was not threatening any unlawful action or threatening to abuse any legal process. The plaintiff simply offered to settle on certain terms, which the defendant was free to accept or reject. There is no suggestion that the plaintiff made any threats, misrepresentations, or improper inducements. The plaintiff's conduct throughout was that of a party engaging in good-faith settlement negotiations.

[72] The defendant cannot convert his own financial difficulties into illegitimate pressure exerted by the plaintiff. As aptly pointed out by the High Court in *Oriental Bank Bhd v. Alphabumi (Malaysia) Sdn Bhd & Ors* [1997] CLJU 531; [1997] 1 LNS 531; [1997] MLJU 24, commercial or financial pressure, by itself, does not constitute undue influence or duress. Many people enter into settlement agreements because they need money or cannot afford to continue litigating. That does not make the agreements voidable.

[73] The evidence demonstrates that the defendant received several days' notice of the plaintiff's settlement terms prior to the conciliation on 6 April 2023. The plaintiff's email outlining its conditions was sent on 28 March 2023. The defendant's response, acknowledging those conditions, was sent on 3 April 2023. The conciliation took place on 6 April 2023. Therefore, the defendant had at least a week to consider the plaintiff's terms, consult with advisors if he wished, and make an informed decision. He was not presented with the SA and told to "sign now or lose the opportunity". He had a reasonable time for reflection and consideration.

[74] Although the defendant was not represented by a lawyer during the conciliation, which is common in IRD proceedings designed to be relatively informal and accessible, he did have access to the IRD officer, Puan Nurul Nadieya, who acted as a neutral conciliator. The evidence indicates that the defendant communicated with the IRD officer *via* email and likely also in person at the conciliation. The IRD officer would have explained the settlement process and ensured the defendant understood what he was signing. While an IRD officer is not a lawyer representing the defendant, the presence of a neutral third party offers some safeguard against oppressive conduct. There is no evidence to suggest that the defendant was isolated, ambushed, or denied any opportunity to seek advice or clarification.

[75] The evidence also shows that the defendant signed both agreements without protest. He did not say, "I am only signing this because I have no choice", or "I am signing under protest", or make any similar statement. If the defendant genuinely believed he was being coerced, one would expect him to have objected at the time. His failure to do so undermines his current claim.

[76] After signing the agreements and receiving the SS, the defendant did not take any steps to set aside the agreements for more than a year. He did not write to the plaintiff to say, "I signed under duress and I am repudiating the contract". He did not file any court application to set aside the agreements. He kept the money and said nothing. It was only in June 2024, more than a year later that the defendant (through his lawyers) first raised the issue of duress in a letter of demand. This lengthy delay is wholly inconsistent with a claim of duress. If the defendant's will had truly been overborne, one would expect him to have acted as soon as he was free from the alleged pressure. His lengthy acquiescence in the contract, coupled with his retention and use of the substantial SS constitutes cogent evidence that he was not in fact subjected to duress.

[77] The defendant received RM1,226,988 under the settlement. This is a very substantial sum of more than a year's salary. It is difficult to see how a settlement that provides such substantial compensation can be characterised as having been procured by duress. The defendant was not forced to accept a pittance; he received a generous settlement that likely exceeded what he might have recovered if he had succeeded in his unjust dismissal claim at the IC. The substantial nature of the consideration undermines any suggestion that the defendant was unfairly exploited or oppressed.

[78] For all these reasons, I find that the defendant has failed to establish economic duress. The evidence shows that the defendant entered into the settlement voluntarily and with his eyes open. He understood the terms, he had alternatives, he had time to consider, and he chose to settle. That he may now regret that choice, or may wish he had held out for better terms or taken his chances in litigation, does not entitle him to set aside the agreement.

Application To The Present Facts – No Undue Influence

[79] The defendant's claim of undue influence fares no better. To establish undue influence under s. 16(2) of the CA 1950, the defendant must show either that the plaintiff held real or apparent authority over him or was in a fiduciary relationship with him (under s. 16(2)(a) of the CA 1950), or that his mental capacity was compromised through age, illness, or mental or physical distress (under s. 16(2)(b) of the CA 1950), and that the plaintiff used its position to dominate his will, and that the resulting transaction was unfairly advantageous to the plaintiff. The defendant has not established any of these elements.

[80] The plaintiff was the defendant's former employer, but the employment had ended months earlier, on 24 November 2022. By the time the settlement was reached on 6 April 2023, more than four months had passed since the termination. The defendant was no longer an employee. He was no longer subject to the plaintiff's instructions or control. He was no longer reliant on the plaintiff for his livelihood. Legally, he was a stranger to the plaintiff, with the only link being the unresolved dispute. Under these circumstances, no relationship of authority, trust, or confidence could create undue influence. The defendant was a free agent, negotiating independently with his former employer through the statutory conciliation process.

[81] The defendant's argument seems to be that because he was a former employee, the plaintiff somehow retained residual authority or influence over him. I cannot accept this reasoning. The termination of employment ends the relationship of authority. While employment relationships do create duties of trust and confidence during employment, these duties cease when the employment ends. A former employer does not hold a fiduciary relationship with a former employee. There is no presumption of undue influence. If the defendant aimed to demonstrate actual undue influence, he would need to prove specific acts of domination or exploitation. He has not done so. The fact that the plaintiff was his employer months earlier does not, by itself, establish undue influence.

[82] The defendant has not adduced any evidence that his mental capacity was compromised through age, illness, or mental or physical distress at the time of signing the agreements. The defendant was a mature adult, highly educated (holding a Senior Technical position), and in full possession of his faculties. There is no medical evidence of any psychiatric condition or cognitive impairment. The defendant's assertion that he was under "mental or physical distress" is vague and unsupported. All parties to settlement negotiations are under some degree of stress – that is the nature of disputes. But stress does not equate to mental incapacity or distress of such severity as to compromise decision-making capacity. The defendant was perfectly capable of understanding what he was signing and making an informed choice.

[83] There is also no evidence that the plaintiff dominated the defendant's will. The settlement negotiations were conducted through the IRD conciliation process, with an independent IRD officer present. There is no suggestion that the plaintiff engaged in any coercive conduct, made any threats, or otherwise sought to overbear the defendant's will. The plaintiff simply stated its settlement terms, which the defendant was free to accept or reject. This is not domination; it is standard settlement negotiation.

[84] Even if the other elements were satisfied (which they are not), the transaction was not unfairly advantageous to the plaintiff. The defendant received RM1,226,988 in exchange for giving up his unjust dismissal claim

and waiving other potential claims. This is a substantial sum and likely more favourable than the outcome the defendant would have achieved through litigation. There is nothing unconscionable about this bargain. Both parties gave up something: the defendant gave up his claims, the plaintiff paid a substantial sum. This is a fair exchange.

[85] For all these reasons, the defendant has failed to establish undue influence. The settlement was not procured by undue influence.

Affirmation Of The Contract

[86] Even if I am wrong in finding that there was no duress or undue influence (which I found there was not), the defendant's claim would still fail on the ground of affirmation. A contract that is voidable for duress or undue influence may be affirmed by the party whose consent was vitiated. Affirmation occurs when that party, with full knowledge of the vitiating factor, chooses to continue with the contract and accepts its benefits. Affirmation may be expressed (by words) or implied (by conduct). The clearest form of affirmation by conduct is the retention of benefits received under the contract.

[87] In this case, the defendant has affirmed the settlement by his conduct in accepting and retaining the settlement sum. Under s. 20 of the CA 1950, when consent is caused by undue influence, the contract is voidable at the option of the party whose consent was so caused. Section 65 of the CA 1950 provides that, upon rescission of a contract, each party must restore any benefits received under the agreement. Section 66 of the CA 1950 provides that if the party rescinding has received any benefit, he is bound to restore it or make compensation for it.

[88] The clear implication of these provisions is that a party seeking to avoid a voidable contract must be prepared to restore benefits received. Here, the defendant has retained the SS of RM1,226,988 for more than a year. He has not offered to return it. He has not placed it in escrow or otherwise preserved it pending resolution of any dispute about the validity of the settlement. He has kept it and, presumably, spent or otherwise dealt with it. By this conduct, the defendant has affirmed the settlement and is now estopped from claiming that it was procured by duress or undue influence.

[89] The defendant cannot have it both ways. He cannot keep the benefits of the settlement (the substantial payment) while repudiating the obligations (the waiver of claims). I agree with the High Court in *TTDI Jaya Sdn Bhd v. Yew Hong Teng & Anor* [2016] MLJU 1772 where it held that a party who retains benefits under a contract while claiming it is voidable may be held to have affirmed the contract. The court there noted that affirmation may be implied from conduct, particularly from the retention of benefits without timely protest.

[90] The principle is grounded in equity and common sense. If the defendant genuinely believed the settlement was procured by duress, the honest course would have been to say so immediately and to offer to return the money. His failure to do so for more than a year demonstrates that he did not, in fact, regard himself as having been coerced. More likely, he was content with the settlement at the time, gratefully accepted the money, and only began to have second thoughts later when he decided to pursue further claims against the plaintiff. This is precisely the kind of opportunistic conduct that the doctrine of affirmation is designed to prevent.

[91] For all the reasons set out above, I find that the settlement agreements were not procured by economic duress or undue influence. The defendant entered into them voluntarily, with full knowledge, and with reasonable alternatives available. Even if there had been duress or undue influence (which there was not), the defendant has affirmed the agreements by retaining the settlement sum. The agreements are not voidable on these grounds.

Issue 4: Fraud

[92] The defendant contends that the settlement agreements are void on the ground of fraud. Specifically, the defendant alleges that the plaintiff fraudulently misrepresented the status of DOSH's investigation into the near-miss incident. The defendant's case is that in the NOT, the plaintiff stated that DOSH had completed its investigation and required no further action from the plaintiff. The defendant contends that this representation was false – that DOSH had not in fact completed the investigation or had not notified the plaintiff of the conclusion. The defendant alleges that this fraudulent misrepresentation induced him to enter into the settlement agreements months later, in April 2023, because he believed (incorrectly) that his complaints to DOSH had been investigated and closed, when in reality they had not been adequately investigated. The defendant argues that, had he known the true position, he would not have settled.

Legal Principles On Fraud

[93] The legal principles governing fraud in contract are well-established. To establish fraud sufficient to void a contract, the party alleging fraud must prove the following elements by clear, cogent and convincing evidence: (i) a false representation of fact; (ii) knowledge of falsity or recklessness as to truth; (iii) intent to induce reliance; (iv) actual reliance; and (v) resulting loss or damage. The requirement for clear, cogent and convincing evidence is strict. As the Court of Appeal held in *CIMB Bank Bhd v. Veeran Ayasamy (Wakil Diri Kepada Letchimi Muthusamy, Si Mati)* [2015] 7 CLJ 289 at para. [27]:

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> The elements of fraud and/or conspiracy must be proved by clear, cogent and convincing evidence. There must be something more than mere failure or an omission on the part of the [defendant]. There can never be fraud and/or conspiracy cannot exist, where the intent to deceive does not exist.

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[94] Moreover, the Federal Court in *Serac Asia Sdn Bhd v. Sepakat Insurance Brokers Sdn Bhd* [2013] 6 CLJ 673; [2013] 5 MLJ 1 held that allegations of fraud require strict proof by way of *viva voce* inquiry – that is, oral testimony subject to cross-examination – not merely affidavit evidence. The court held that it would be wrong to make findings of fraud based solely on affidavits where the deponent has not been cross-examined and the respondent has not had a fair opportunity to challenge the allegations.

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Application To The Present Facts

[95] In the present case, the defendant has wholly failed to establish fraud. There are multiple fatal defects in the defendant's fraud case.

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[96] The defendant has not provided clear, cogent, and convincing evidence of fraud. His allegation essentially claims that the plaintiff's statement in the NOT about DOSH having completed its investigation was false. However, the defendant has not produced any evidence from DOSH that contradicts the plaintiff's position. He has not obtained a letter or statement from DOSH indicating that its investigation was not completed or that the plaintiff was not notified. Without such evidence, the fraud allegation is purely speculative. The defendant is essentially asking me to infer fraud solely because he disputes the plaintiff's account. That is not sufficient. Fraud must be proven, not assumed.

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[97] The defendant has not adduced any *viva voce* evidence to support his fraud allegation. This matter has proceeded by way of originating summons on affidavit evidence. No witnesses have been called for cross-examination. The defendant has not applied to cross-examine the plaintiff's deponents. In these circumstances, and given the principle in *Serac Asia*, I cannot find fraud. The fraud allegation is simply too serious to be determined on untested affidavit evidence where the defendant has not discharged his burden of producing clear and convincing proof.

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[98] Even if the plaintiff did make a false statement in the NOT (which is not established and which the plaintiff denies), that statement was made months before the settlement. The settlement agreements were signed in April 2023, approximately four to five months after the termination. The defendant has not demonstrated that the alleged misrepresentation in the NOT was reiterated or relied upon during the settlement negotiations. There is no evidence that, in April 2023, when the settlement was being negotiated, the plaintiff made any representation regarding the status of the DOSH

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investigation that influenced the defendant to settle. The negotiations related to the settlement of the unjust dismissal claim, not the status of DOSH's investigation.

[99] The defendant has not established that he relied on any alleged misrepresentation in deciding to settle. The defendant's own evidence is that he disputed the grounds for his termination and believed his termination was unjust. His representation to the IRD was based on this belief. When he settled, he was settling his claim for unjust dismissal in exchange for substantial compensation. There is no evidence that any belief about the status of the DOSH investigation influenced his decision to settle. The defendant has not explained how the alleged misrepresentation about DOSH induced him to settle the unjust dismissal claim. The two matters are logically distinct.

[100] The crucial point is that the defendant entered into the settlement in April 2023 with full knowledge of all the facts. He knew what complaints he had made to DOSH. He knew what he believed to be the truth about the near-miss incident and the plaintiff's safety practices. He knew the grounds for his termination. He knew the contents of the NOT, including the statement about DOSH. If he disputed that statement, he could have raised it at the time. He could have made it a condition of settlement that the plaintiff clarify or provide evidence about the DOSH investigation. He did not do so. He settled all disputes arising from his employment and termination for a substantial sum. Having done so with full knowledge, he cannot now claim fraud.

Extinguishment Of Prior Claims By Settlement

[101] There is a further and independent reason why the fraud allegation fails. Even if there had been some misrepresentation in the NOT (which is not established), that alleged misrepresentation was subsumed and superseded by the settlement. In *Newlake Development Sdn Bhd v. Zenith Delight Sdn Bhd & Ors* [2021] CLJU 92; [2021] 1 LNS 92; [2021] 9 MLJ 581, the relevant judgment is at paras. [55]-[57]:

> [55] In a letter dated 31 October 2012, D2 (on behalf of D1) said that P knew that D1 was still negotiating the purchase of the land and had yet to sign the back to back SPA with the landowners ... At all material times and up until the settlement agreement was entered into on 23 July 2013, no allegations of fraud or breach of stakeholder duty were ever raised despite P having discovered the purported deceit on 27 December 2011. After numerous exchanges between AJC (on behalf of P) and D2 (on behalf of D1), the settlement agreement was entered into.
>
> [56] The substratum of this whole suit is the deposit and what P essentially wants is to recoup the deposit. The inconsistencies in P's conduct are these. If there were fraudulent misrepresentations and breach of stakeholder duty: (a) why did P not sue the defendants on such causes

> of action and instead entered into the settlement agreement? (b) why did P's solicitors AJC not raise them in any of the correspondence with D2 during the settlement negotiations? and (c) why did P substantiate its claim for refund on the premise that the SPA is void due to the Amanah Raya issue? All this points to the probabilities of the case that there was no fraud as alleged by P.
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> [57] P entered into the settlement agreement with open eyes and on arm's length basis. The alleged fraud was within P's knowledge at that material time. P was represented by independent legal counsel. The settlement agreement in effect subsumed and superseded all previous disputes between P and D1. P's pleaded case did not include any averment warranting the setting aside of the settlement agreement ... As such, P cannot now revive its complaint when they have agreed to settle the matter.

[102] These observations apply with equal force to the present case. The defendant entered into the settlement in April 2023 with full knowledge of the alleged "fraud" (if any) in the NOT. Suppose the defendant genuinely believed that the plaintiff had lied about the DOSH investigation and that this amounted to fraud vitiating the termination. In that case, he should have raised this during the settlement negotiations and made it clear that he was not settling that issue. He did not do so. Instead, he agreed to a comprehensive settlement that waived "all claims, complaints, demands, or causes of action whatsoever" arising from his employment and termination. The SA expressly states that it constitutes a "full and final settlement" of the dispute. This language is clear and unambiguous. It means that all issues arising from the employment and termination, including any allegations of fraud, were settled and released.

[103] The defendant cannot now, more than a year later, seek to revive an allegation of fraud that he settled and released. If parties could do this, settlement agreements would be meaningless. Any time a party had second thoughts about a settlement, he could simply claim that there was misrepresentation or fraud in the underlying dispute and try to set it aside. This would undermine the finality that is the core purpose of settlements. The law does not allow such opportunistic behaviour.

[104] The defendant entered the settlement with "open eyes" (as per *Newlake*). He knew all the material facts. He was represented by the IRD conciliation process (if not by a lawyer). He chose to settle all disputes for substantial compensation. Having done so, he cannot resurrect the same disputes by alleging fraud. The settlement subsumed and superseded all prior disputes, including any allegations about the DOSH investigation.

[105] For all these reasons, I find that the defendant has failed to establish fraud. The allegations are unsupported by clear and convincing evidence, are not based on *viva voce* testimony as required for fraud allegations, concern

statements made in the NOT rather than in the settlement negotiations, and in any event were settled and released by the settlement agreements. The agreements are not void on the grounds of fraud.

Issue 5: Illegality And Public Policy

[106] The defendant contends that the SA is void for illegality and against public policy, specifically alleging that it stifles criminal prosecution, violates the WPA 2010, contravenes the OSHA 1994 and offends the Penal Code.

General Principles On Illegality

[107] Section 24 of the CA 1950 states that agreements are void if their object or consideration is – (a) forbidden by law; (b) would defeat any law; (c) fraudulent; (d) injurious to person or property; or (e) opposed to public policy.

Does The SA Stifle Prosecution?

[108] The defendant relies on *Charles Ooi Kiah Inn & Anor v. Kukuh Maju Industries Sdn Bhd* [1993] 3 CLJ 199; [1993] 2 MLJ 224, where the Supreme Court held that agreements with express consideration to withdraw criminal charges are void as they stifle prosecution. However, that case is clearly distinguishable. In the present case, there were no criminal proceedings in existence at the time the settlement agreements were executed. There was no police report, no investigation, and no charges filed. The SA did not seek to withdraw or terminate any existing prosecution. It cannot be said to "stifle" something that did not exist.

[109] The SA does not contain any express clause requiring the defendant to withdraw criminal complaints or refrain from reporting crimes to authorities. Clause 1.3 of the SA provides for a general waiver of civil claims. It does not purport to prevent the defendant from reporting criminal conduct to law enforcement authorities.

[110] Even if the defendant agreed not to pursue private prosecution, this does not affect the right of public authorities to investigate and prosecute criminal offences if they become aware of them. The defendant remains free to lodge police reports. The authorities remain free to investigate and prosecute. No public prosecution is being stifled.

[111] The principle in *Charles Ooi Kiah Inn* applies where there is an agreement to withdraw or compound non-compoundable criminal offences. That is not the case here. In *Abdul Rashid Maidin & Ors v. Lian Mong Yee* [2008] 1 CLJ 1; [2008] 1 MLJ 469, the Court of Appeal held that settlement agreements do not automatically prevent prosecution by authorities, and the authorities' discretion remains unaffected.

A **WPA 2010**

[112] The defendant contends that he is a "whistleblower" entitled to protection under the WPA 2010, and that the settlement agreement violates this protection. I make the following findings:

B (i) no finding by enforcement agency:

Section 14 of the WPA 2010 clearly states that a person who alleges detrimental action must make a complaint to the relevant enforcement agency. The agency must investigate and make findings. In the present case, the defendant made complaints to DOSH regarding safety issues.
C DOSH investigated and closed the investigation, informing the plaintiff that no further action was required. In fact, DOSH rejected the defendant's allegations that his termination was detrimental action. No enforcement agency has made any finding that the defendant's termination was detrimental action within the meaning of the WPA
D 2010;

(ii) termination was for misconduct, not whistleblowing:

The evidence shows that the defendant was dismissed for multiple grounds of misconduct outlined in detail in the SCL and NOT, including
E breach of company policy, insubordination, causing disruption to colleagues, and his failure to perform assigned tasks.

The termination was not a result of the defendant's reports to DOSH. The plaintiff's investigation into the near-miss incident had been completed before the termination. The WPA 2010 does not prohibit
F employees from entering into settlement agreements regarding employment disputes. The Act protects whistleblowers from detrimental action; it does not prevent them from voluntarily settling civil disputes for consideration.

The defendant was not coerced into the settlement. He made an
G informed choice to settle all disputes arising from his employment and termination for the sum of RM1,226,988. If the defendant genuinely believed he had valid whistleblower claims, he could have refused to settle and pursued his remedies. He chose not to do so; and

(iii) Section 16(2) of the WPA 2010 not breached:

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Section 16(2) of the WPA 2010 provides that the right to bring proceedings for damages "does not affect any other right or remedy that may be available under any other written law". This provision does not prevent parties from settling disputes. It simply clarifies that pursuing
I WPA remedies does not preclude other statutory remedies. It does not prohibit settlement agreements.

[113] For these reasons, I find that the SA does not violate the WPA 2010.

OSHA 1994 And PC

[114] The defendant's contentions regarding OSHA 1994 and the PC are similarly without merit. The defendant has not proven that any criminal offences were committed. His allegations are unsubstantiated. Even if criminal offenses occurred, the SA does not prevent DOSH or other authorities from investigating and prosecuting. The defendant remains free to make reports to authorities. A civil settlement between parties does not extinguish criminal liability or prevent authorities from prosecuting criminal offences. These are separate spheres.

Public Policy

[115] The defendant argues that the SA is against public policy because it purports to waive all claims "whether related to employment or not". I reject this contention. Settlement agreements that provide for comprehensive releases are standard and serve the important public policy of promoting finality in disputes and avoiding prolonged litigation. The law encourages parties to settle their disputes. Broad release clauses are lawful and enforceable unless they violate a specific statutory prohibition or public policy.

[116] In the present case, the SA does not purport to waive the defendant's right to report crimes to authorities. Also, it does not prevent authorities from investigating or prosecuting and it provides for a civil settlement of civil disputes between the parties. This is perfectly lawful and serves the public interest in promoting settlement.

[117] For all these reasons, I find that the SA is not void for illegality or against public policy.

Issue 6: Breach Of The Agreements

[118] Having found that the SA and memorandum are valid, binding, and enforceable, I now consider whether the defendant has breached them.

[119] Clause 1.3 of the SA provides:

> In consideration of the Settlement Sum, Employee acknowledges, agrees and undertakes that the execution of this Agreement and the payment of the Settlement Sum in the manner set out herein constitutes a full and final settlement and a waiver of **all claims, complaints, demands, or causes of action whatsoever** (whether in contract, tort or otherwise, and whether related to employment or not) that the Employee has or may have against the Company or any of the Company's related entities, subsidiaries, affiliates, officers, directors, agents or employees, including any claims, complaints or representations made to any government bodies or agencies. (emphasis added)

[120] Clause (ii) of the memorandum provides:

> The [Defendant] and Employer agree not to make any claims against each other **related to the [Defendant's] representation**.
>
> (emphasis added)

[121] After executing these agreements and receiving the SS, the defendant filed OS 1408 which is the civil proceedings seeking:

(i) an injunction to restrain disciplinary action and termination;

(ii) an order rescinding or setting aside the notice of termination;

(iii) an order directing DOSH to re-investigate the near-miss incident; and

(iv) damages.

[122] These claims directly challenge the termination and arise from the same employment relationship that was settled by the agreements.

[123] The defendant then applied for private prosecution against the plaintiff and its affiliates, alleging criminal offences under OSHA 1994, WPA 2010 and PC. In the complaint supporting the private prosecution, the defendant specifically alleged that his termination was illegal and constituted detrimental action. These actions constitute clear breaches of both agreements.

[124] The OS 1408 and private prosecution are "claims, complaints, demands, or causes of action" against the plaintiff and its affiliates. They are expressly prohibited by cl. 1.3 of the SA. The defendant had contractually waived all claims, not just claims for unjust dismissal. This includes claims under WPA 2010, OSHA 1994 and the PC.

[125] Both the civil proceedings and criminal prosecution are "related to the representation" within the meaning of cl. (ii). They arise from the same factual matrix – the defendant's employment, his complaints to DOSH and his termination. The representation before the IRD was for unjust dismissal. The current proceedings similarly challenge the lawfulness of the termination, *albeit* on different legal grounds. The subject matter is the same.

[126] The defendant argues that he is not bound by the SA, which I have found he is. He claims that the SA only prohibits unjust dismissal claims, but I have determined it prevents all claims. He further states that he can pursue WPA and OSHA claims separately, but I have found these are also barred by the agreements. Additionally, he argues that cl. (ii) of the memorandum only prohibits unjust dismissal claims and not other types, a view I reject.

[127] The defendant relies on *Yushri Zainudin v. Silterra Malaysia Sdn Bhd* [2017] CLJU 2187; [2017] 1 LNS 2187; [2017] MLJU 2201 for the proposition that WPA claims can be pursued separately from unjust dismissal claims.

[128] That case is distinguishable. In *Yushri*, there was no settlement agreement waiving all claims. The plaintiff was pursuing concurrent remedies under different statutes, which the court held was permissible.

[129] In the present case, the defendant has contractually agreed to waive all claims. The existence of the settlement agreement completely changes the analysis. The defendant cannot rely on statutory remedies that he has contractually waived for valuable consideration.

[130] Settlement agreements should be interpreted according to standard contract principles, reflecting the parties' intention as objectively determined from the language used. The phrase "all claims, complaints, demands, or causes of action whatsoever" in cl. 1.3 is intentionally broad and unqualified. It clearly covers claims in contract, tort, or other areas; claims related to employment or not; claims under any statute; claims before any forum (civil, criminal, administrative); and claims against the plaintiff and its associates.

[131] To interpret this clause narrowly, as the defendant urges, would defeat the clear intention of the parties to achieve a comprehensive settlement. The defendant received substantial consideration (RM1,226,988) for agreeing to this broad waiver. He cannot now repudiate his contractual undertaking.

Section 20(4) of the IRA 1967

[132] The defendant argues that s. 20(4) of the IRA 1967 only bars claims for unjust dismissal at the IC, not other claims in other forums. This is correct. But, s. 20(4) of the IRA 1967 deals with the statutory consequence of receiving compensation under an award or settlement at the IRD – it bars pursuing the same claim for unjust dismissal.

[133] Clause 1.3 of the SA goes beyond s. 20(4) of the IRA 1967. It is a contractual waiver of all claims, not just unjust dismissal claims. The defendant contractually agreed to this broader waiver in exchange for the SS. There is nothing in the IRA 1967 that prevents parties from agreeing to a wider settlement that releases all claims. Indeed, such comprehensive settlements are encouraged by law.

[134] I find that the defendant has breached both the SA and the memorandum by filing OS 1408, initiating the private prosecution application and seeking to challenge the termination through these proceedings. These actions clearly contravene his contractual commitments, which he voluntarily entered into for substantial consideration.

Conclusion

[135] Having found that the defendant has breached the agreements, the plaintiff is entitled to the remedies sought, *ie*, as per encl. 1 prayer 1, 2, 3 and 6 only, namely:

A (i) a declaration that the defendant has committed breach of the terms of the SA and/or memorandum, which are both dated 6 April 2023;

(ii) an injunction to permanently restrain the defendant from committing breach and/or further breach of the terms in the SA and/or memorandum, which are both dated 6 April 2023;

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(iii) general damages against the defendant to be assessed; and

(iv) costs.

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